

On March 31, 2008 appellant, a 60-year-old sales and service associate clerk, filed a traumatic injury claim (Form CA-1) for neck sprain and musculoskeletal inflammation of the neck and left shoulder. She attributed her condition to a March 18, 2008 incident, while working the nightshift, when she was required to lift numerous heavy packages. The employing establishment controverted appellant's claim.

On April 18, 2008 Dr. Allen S. Glushakow, a Board-certified internist, excused appellant from work beginning April 18, 2008. In reports dated April 4 and 18, 2008, he reported findings on examination and diagnosed appellant with internal derangement of the left shoulder, torn rotator cuff, myositis, capsulitis of the left shoulder and metatarsalgia. Dr. Glushakow excused appellant from work until May 16, 2008. On April 29, 2008 he reported that appellant was “totally disabled at this time.”

On March 19, 2008 Dr. Stephen Law, Board-certified in emergency medicine, reported findings on examination, a review of appellant’s history of illness and diagnosed her with neck pain and cervical radiculopathy.

By decision dated May 20, 2008, the Office denied appellant’s claim because the evidence of record was insufficient to establish she sustained an injury as defined by the Federal Employees’ Compensation Act.

On June 16, 2008 appellant, through her attorney, requested a hearing.

On May 16, 2008 Dr. Glushakow diagnosed appellant with left shoulder internal derangement and lumbosacral radiculitis.

A hearing was conducted on October 28, 2008. Appellant’s attorney argued that the evidence of record established that appellant actually sustained an injury on the date alleged.

By decision dated January 2, 2009, the hearing representative accepted that appellant was working on March 18, 2008, during which she lifted packages as alleged, but denied appellant’s claim because the evidence of record was insufficient to establish that her injury was causally related to the identified employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Act¹ has the burden of establishing the essential elements of the claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment

¹ 5 U.S.C. §§ 8101-8193.

² C.S., 60 ECAB ____ (Docket No. 08-1585, issued March 3, 2009).

³ S.P., 59 ECAB ____ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

incident at the time, place and in the manner alleged.⁴ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵

ANALYSIS

The Office accepted that appellant was working on March 18, 2008 during which time she lifted packages and buckets on March 18, 2008 as alleged. Appellant's burden is to establish that her injury is causally related to the identified March 18, 2008 employment incident. Causal relationship is a medical issue that can only be proved by rationalized medical opinion evidence.

On appeal appellant's attorney argues that the evidence of record, consisting of appellant's statements and Dr. Glushakow's notes and reports, is sufficient to satisfy appellant's burden of proof. The medical evidence of record also contained a report signed by Dr. Law.

While Dr. Glushakow reported findings on examination, a review of appellant's history of injury and proffered a diagnosis, he provided no opinion concerning how the accepted employment incident caused appellant's injury. He did not describe the physical or anatomic change in her shoulder or neck caused by the March 18, 2008 incident and how it resulted in appellant becoming symptomatic. Lacking a thorough medical rationale on the issue of causal relationship, Dr. Glushakow's notes and reports are of little probative value and, thus, insufficient to satisfy appellant's burden of proof.⁶

Dr. Law's report is also of limited probative value on the issue of causal relationship. First, he diagnosed appellant with pain, which is a symptom not a compensable diagnosis for purposes of the Act.⁷ Secondly, while Dr. Law also diagnosed her with cervical radiculopathy, because he provided no opinion concerning if and how the accepted March 18, 2008 incident caused cervical radiculopathy, his opinion is of limited probative value on the issue of causal relationship and, therefore, appellant has not satisfied her burden of proof.⁸

The Board finds appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on March 18, 2008 causally related to her federal employment.

⁴ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

⁵ *T.H.*, 59 ECAB ____ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁶ *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *C.F.*, 60 ECAB ____ (Docket No. 08-1102, issued October 10, 2008).

⁸ *Supra* note 6.

CONCLUSION

The Board finds appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on March 18, 2008 causally related to her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the January 2, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 4, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board